

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommuni-)
cations and Energy pursuant to G.L. c. 164,)
1A(a), 1B(d), 94; and 220 C.M.R. 11.04, into the)
costs that should be included in Western)
Massachusetts Electric Company's Default Service)
Rates.)

D.T.E. 03-88F

**OPPOSITION OF WESTERN MASSACHUSETTS ELECTRIC
COMPANY TO THE PETITIONS TO INTERVENE OF
CENTRICA NORTH AMERICA, DOMINION RETAIL, INC.
CONSTELLATION NEWENERGY, INC., AND SELECT ENERGY, INC.**

I. HISTORY OF THE PROCEEDING

On June 21, 2002, the Department of Telecommunications and Energy ("Department") opened an investigation into Default Service, including the cost components that should be included in distribution companies' Default Service rates. *Procurement of Default Service*, D.T.E. 02-40. After a lengthy investigation of the matter, the Department issued its order on April 24, 2003. D.T.E. 02-40-B. In its order the Department determined that certain costs not in Default Service rates should be included in these rates. The Department proceeded to specify in detail the costs that were to be included and the mechanism for doing so. D.T.E. 02-40-B, pp. 15-20. The Department further stated that distribution company-specific proceedings would be initiated for each distribution company to determine the amount to be included in Default Service rates and the adjustment to each rate class' distribution rates (p. 20).

On November 17, 2003, the Department opened its inquiry into the amount to be included in Western Massachusetts Electric Company's ("WMECo" or "Company") Default Service rates and the adjustment to WMECO's distribution rates. Inquiries relating to the other distribution companies were initiated at the same time. In its November 17, 2003 Order, the Department reiterated the categories and types of costs that were to be reclassified (pp. 2-4).

On January 20, 2004, WMECO submitted its prefiled testimony and exhibits in compliance with the Department's November 17, 2003 Order. WMECO's filing separated costs into wholesale and retail components, as directed by the Department. Although the Department's November 17, 2003 Order provided for the collection of incremental costs by WMECO (that is, Default Service costs that are not currently collected through either base rates or Default Service rates), WMECO has not requested the collection of any such costs.

On February 17, 2004 the Department noticed this proceeding and a number of parties petitioned for either full or limited party status.¹ At the March 11, 2004 procedural conference in this matter, a number of these parties were granted intervenor or limited party status. The Attorney General has noticed his participation and MASSCAP was granted intervenor status. Tr., p. 31. Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, Unitil, and Massachusetts Electric Company and Nantucket Electric Company were granted limited party status. Tr., p. 28.

In addition, the Division of Energy Resources ("DOER") and the Associated Industries of Massachusetts ("AIM") have petitioned to intervene. WMECO herein

¹ Although the timely petitions of several of the petitioners was deemed flawed, the Department allowed these parties to amend their petitions after the intervention deadline. Tr., pp. 30-31.

raises no objection to those petitions. The remaining petitioners were Centrica North America, Dominion Retail, Inc., Constellation NewEnergy, Inc., and Select Energy, Inc.

II. THE DEPARTMENT IS UNDER NO OBLIGATION TO ALLOW THE INTERVENTION OF CENTRICA NORTH AMERICA, DOMINION RETAIL, INC., CONSTELLATION NEWENERGY, INC., AND SELECT ENERGY, INC. AND THEIR PETITIONS SHOULD BE REJECTED

A. THE DEPARTMENT HAS BROAD AUTHORITY TO DISALLOW INTERVENOR STATUS AND SHOULD DO SO HERE.

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R.

1.03(1)(b); *see also* G.L. c. 30, §10. Under this standard the Department has broad (though not unlimited) discretion to grant or deny participation in its proceedings. *Tofias v. Energy Facilities Siting Board*, 435 Mass. 340 (2001); *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, at 45-46 (1978); *see also Newton v. Department of Public Utilities*, 399 Mass. 535, at 543, n.1 (1959). Moreover, a commercial interest alone does not qualify a party for intervenor status. *Cablevision v. Department of Telecommunications and Energy*, 428 Mass. 436 (1998) (the Department did not abuse its discretion in denying intervention to Cablevision Systems Corporation in a proceeding involving Boston Edison Company).

In *Save the Bay, Inc. v. Department of Public Utilities*, 366 Mass. 667 (1975), the court reinforced the Department's discretion by stating that "the multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact requirements as to standing, seriously erode the efficacy of the administrative process." *Id.*, at 672. The Department has often exercised its right to limit participation in its proceedings. *See, e.g., Boston Edison Company*, D.P.U. 96-23

(September 8, 1997) (Cablevision and New England Cable Television Association denied intervenor status); *Cambridge Electric Light Company*, D.P.U. 95-36 (April 26, 1995) (WMECO denied intervenor status); and *Massachusetts Electric Company*, D.P.U. 95-40 (April 20, 1995), *Western Massachusetts Electric Company*, *Cambridge Electric Light Company* and *Commonwealth Electric Company* denied intervenor status).

This proceeding is the perfect example of a matter in which the Department should exercise its discretion and exclude from full party status Centrica North America, Dominion Retail, Inc., Constellation NewEnergy, Inc., and Select Energy, Inc. (hereinafter collectively referred to as the “Suppliers”). These parties are energy suppliers currently supplying customers or hoping to supply customers. Their interest is purely commercial; they are not themselves customers of WMECO and their customers are not Default Service customers of WMECO. As indicated below, in this proceeding there are plainly sufficient representatives of customers, and even commercial interests (although none is necessary or warranted), without their participation.

As the Department is well-aware, the scope of this proceeding does not provide for debate of policy issues surrounding Default Service. Rather, it is a limited effort to determine if specific limited costs enumerated by the Department have been correctly calculated in WMECO’s and the other companies’ compliance filings. Suppliers do not bring any special expertise to the effort of checking WMECO’s bad debt expense and administrative costs. The parties already in the proceeding do provide such expertise. The Attorney General, representing all consumers in the Commonwealth, has a great deal of experience in these matters. He has already issued interrogatories and shown he will

take an active role in the proceeding. In addition, MASSCAP, representing a large group of customers, has experience in the Department's adjudicatory proceedings.

Further, even assuming there were some requirement that the Suppliers' have a particular interest that must be represented in this proceeding, parties in the proceeding adequately represent Suppliers. First, AIM represents businesses in the Commonwealth and will presumably be a party. It is WMECO's understanding that one or more of the Suppliers may even be members of AIM. Second, the DOER will likely be a party. The DOER has been keenly aware of Supplier interests regarding Default Service and has advocated for these interests. Indeed, the comments submitted by DOER a few days ago in this proceeding emphasize that very point. The DOER stated that it "is concerned that default service costs inappropriately or inconsistently calculated would negate the objectives in the Department's directive to create a more level playing field for electricity suppliers competing against the default service prices" (DOER comments, March 15, 2004, p. 1). The DOER has long advocated for a level playing field for Suppliers (*see, e.g.,* DOER Comments, D.T.E. 02-40 (August 9, 2002)) and in this proceeding fully represents their interests.

Accordingly, the Department should exercise its discretion, given the narrow scope of this proceeding, and decline to grant Suppliers full party status.

B. THE SUPPLIERS HAVE ALREADY INDICATED THEY HAVE NO INTENTION OF COMPLYING WITH THE SCOPE OF THE PROCEEDING ESTABLISHED BY THE DEPARTMENT; THE EFFICACY OF THE ADMINISTRATIVE PROCESS REQUIRES THAT THEY BE DENIED INTERVENTION.

The Supreme Judicial Court has stated that the efficacy of the administrative process is an issue in determining party participation. *Save the Bay, Inc. v. Department*

of Public Utilities, supra, at 672. Here, we have to go no further than the Suppliers own words to ascertain that they have no interest in this proceeding and wish only to ‘hijack’ it to investigate matters more to their own liking.²

In comments perhaps unrivalled in the history of the Department for their sheer effrontery and unmitigated arrogance, Centrica North America and Dominion state that they do not like the scope of the Department’s proceeding so it should be changed to a much more attractive subject (to them) – how to implement Centrica North America’s radical electric industry restructuring proposal to the Massachusetts Legislature. Joint Comments of Direct Energy/Centrica and Dominion Retail, Inc. (hereinafter the “Joint Comments”), March 15, 2004, pp. 2-4.

It is worth quoting from the Joint Comments to illustrate the position that will be advocated should the Suppliers be granted intervenor status.

More comprehensive alternatives having been eliminated, no party who has taken an interest in this proceeding is under any illusion that it will lead to the development of a robust retail market that will offer real choice to market customers....The amounts at issue are small [p. 2].
.....

Given the pendency of the Bosley Proposal, Direct Energy [Centrica North America] and Dominion urge the Department to take the following actions with respect to the current proceeding. Because as all parties agreed at the procedural conference, the numbers involved are small, the case should be delayed to allow the Department to focus on more pressing matters [footnote omitted]. The pressing matters to which the Department should turn its attention are those that would be required to implement the Bosley Proposal. The implementation of the Bosley Proposal would require a substantial amount of work....There is little time to lose [pp. 3-4].

² Of the Suppliers, only Select Energy, Inc. has acknowledged that the scope of this proceeding is narrow and has agreed to operate within those bounds. Tr., p. 30.

Given that the Suppliers have stated that the proceeding noticed by the Department is meaningless and that they do not wish to participate in it, WMECO urges the Department to avoid imposing an unwanted obligation on them. The Department can accomplish this only by rejecting the Suppliers' petitions to intervene, thereby allowing the entities who do want to participate under the Department's rules to proceed to the orderly adjudication of the case. In fact, to do otherwise would fly in the face of the Supreme Judicial Court's caution in *Save the Bay* that agencies endeavor to preserve the efficacy of their administrative proceedings.

III. CONCLUSION

For the reasons set forth above, Western Massachusetts Electric Company opposes in this proceeding the full party intervention of Centrica North America, Dominion Retail, Inc. Constellation NewEnergy, Inc., and Select Energy, Inc.

Respectfully submitted,
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March 18, 2004